

II. REMARKS

Upon allowance of independent claim 2, Applicant respectfully requests that withdrawn claim 44, which depends indirectly upon claim 2, be rejoined with the allowed claims in accordance with MPEP § 821.04.

By the present amendment, claims 2, 3, 11-19, 23, 24, 26-28, 47-54, 56, and 58-60 have been amended. Specifically, claims 2, 3, 24, 26, 56, 58 have been amended to change the phrase “biologically active protamine polypeptide” to simply --protamine polypeptide--, which has a broadening effect on the scope of the claims because the phrase “protamine polypeptide” encompasses in scope protamine polypeptides that are biologically active and protamine polypeptides that are not necessarily biologically active. Claims 2, 3, 11, 24, 26-28, 44, 56 and 58-60 have been amended to delete the phrase “functional fragment,” which has no limiting effect on the scope of these claims. Claim 12 has been amended to recite “whole animal organisms and whole plant organisms” as supported by previous claim 12. Claims 13-19, 23 and 47-54 have been amended to delete the phrase “whole organism,” which has no further limiting effect on the scope of these claims.

The present amendment adds no new matter to the above-captioned application.

Applicant reserves the right to file one or more continuation and/or divisional applications in order to pursue patent protection for subject matter not allowed in the present application.

A. The Rejections

Claims 2, 3, 5-28, 44 and 47-54 stand rejected under 35 U.S.C. § 112, first paragraph, as allegedly failing to comply with the enablement requirement.

Claims 2, 3 and 5-54 stand rejected under 35 U.S.C. § 112, second paragraph, as indefinite.

Claims 2, 3, 5-9, 10-12, 22 and 24-26 stand rejected under 35 U.S.C. § 102(b) as anticipated by McMahon et al. (Harvey T. McMahon et al., *Cellubrevin is a Ubiquitous Tetanus-toxin Substrate Homologous to a Putative Synaptic Vesicle Fusion Protein*, 364 NATURE 346-349 (1993), hereafter, the “McMahon Article”).

In view of the present amendment, Applicant respectfully traverses the Examiner’s rejections and requests reconsideration of the above-captioned application for the following reasons.

B. Applicant’s Arguments

In view of the present amendment, claims 2, 3, 5-28, 44 and 47-62 are in compliance with 35 U.S.C. § 112.

i. The Section 102 Rejection

Anticipation under 35 U.S.C. § 102 requires showing the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. Lindemann Maschinenfabrik GMBH v. American Hoist & Derrick, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). In this case, the Examiner has not established a prima facie case of anticipation against any of Applicant’s claims because the McMahon Article fails to teach each and every claimed limitation.

ii. The McMahon Article

The McMahon Article discloses that cellubrevin is a ubiquitous tetanus-toxin substrate homologous to a putative synaptic vesicle fusion protein. As admitted by the Examiner (Office Action, dated April 14, 2008, at 6, lines 18-19), the McMahon Article does

not teach, or suggest, "SEQ ID NO. 32" as recited by independent claims 2, 3, 24, 26, 56 and 58. Therefore, the McMahon Article cannot anticipate the claims of the present application.

III. CONCLUSION

Claims 2, 3, 5-28, 44 and 47-62 are now in compliance with 35 U.S.C. § 112. Furthermore, the Examiner has failed to establish a prima facie case of anticipation against claims 2, 3, 5-28, 44 and 47-62 because the McMahon Article does not teach, or suggest, "SEQ ID NO. 32" as recited in these claims.

For all of the above reasons, claims 2, 3, 5-28, 44 and 47-62 are in condition for allowance and a prompt notice of allowance is earnestly solicited.

Questions are welcomed by the below-signed attorney for Applicant.

Respectfully submitted,

GRIFFIN & SZIPL, P.C.



Joerg-Uwe Szipl
Registration No. 31,799

GRIFFIN & SZIPL, P.C.
Suite PH-1
2300 Ninth Street, South
Arlington, VA 22204

Telephone: (703) 979-5700
Facsimile: (703) 979-7429
Email: GandS@szipl.com
Customer No.: 24203